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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SYLVIA ALVARADO,

Plaintiff,

V.

PFIZER, INC., McKESSON
CORPORATION,

Defendants.

Case No. 2:14-cv-01843-SVW-FFM

**PLAINTIFF’S RESPONSE TO
DEFENDANT PFIZER, INC.’S
STATUS REPORT AND
REQUEST FOR STATUS
CONFERENCE CONCERNING
CALIFORNIA LIPITOR [STATE
COURT] ACTIONS**

California State Court Plaintiff Sylvia Alvarado (Alvarado), agrees with Defendant Pfizer, Inc. that this Court should hold a status conference concerning the California Lipitor state court actions at the Court's earliest convenience. Alvarado files this brief response to Pfizer's Status Report to clarify misleading statements Pfizer made in its Status Report (which Pfizer filed without consulting Alvarado or any other of the California State Court Plaintiffs).

1 ***First, the only issue that this Court needs to address at the initial status***
2 ***conference is subject matter jurisdiction under CAFA:*** Pfizer's Status Report
3 neglects to advise this Court that the MDL judge has already decided every issue
4 raised by the California State Court Plaintiffs, including Alvarado, in their
5 remand motions and has decided those issues against Pfizer. *See* MDL CMO 87
6 (remand decision in most California Lipitor State Court Actions) (a true and
7 correct copy of CMO 87 is attached to this pleading as Exhibit A). The reason
8 the cases are back before this Court now is because Judge Gergel properly
9 concluded that it would be improper for the MDL court, having decided that no
10 other basis for federal jurisdiction exists in these cases except possibly CAFA
11 mass action jurisdiction, to address CAFA mass action jurisdiction. This is
12 because 28 U.S.C. section 1332(D)(11)(C)(i) precludes transfer of mass tort
13 actions like this one into an MDL unless a majority of Plaintiffs agree to such
14 transfer, which did not happen here. Accordingly, the sole issue for this Court at
15 this time is whether federal subject matter jurisdiction exists under CAFA's mass
16 action provision. Because such jurisdiction does not exist, the proper result will
17 be for this Court, having resolved the CAFA jurisdiction issue, to send these cases
18 back to California state court where they should have been all along.

19 ***Second, the California actions were stayed throughout the entire time***
20 ***they were pending in the MDL:*** Pfizer's Status Report misleadingly refers to
21 expert witness and dispositive motion proceedings in the MDL as if those
22 decisions have some bearing on the California Lipitor State Court Actions. They
23 do not. The California Lipitor State Court Actions were stayed in their entirety¹
24

25
26 ¹ With the sole, sensible exception that the California State Court Plaintiffs were required
to participate in depositions of common witnesses.

1 throughout the time they were in the MDL court awaiting disposition of motions
 2 to remand concerning federal subject matter jurisdiction. *See* MDL CMO 10
 3 (docket number 292 in the MDL, entered June 27, 2014) (a true and correct copy
 4 of MDL CMO 10 is attached to this pleading as Exhibit B). Pfizer's references to
 5 Daubert motions and summary judgment proceedings in the MDL, therefore, are
 6 at best a red herring (indeed, in Lipitor State Court proceedings in Missouri, the
 7 Daubert decisions went against Pfizer). Alvarado suspects that Pfizer offered
 8 these references to certain MDL proceedings when it did, at the outset and
 9 without consulting with any California State Court Plaintiff, to attempt to create
 10 the misimpression that these cases arrive now in California starting at almost the
 11 finish line, when in fact the cases have not even gotten out of the starting block
 12 because they have been in a holding pattern for nearly three years due to Pfizer's
 13 wrongful removal.²

14
 15 Dated: January 3, 2017.

Respectfully submitted,

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/s/ Bill Robins III

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 26 ² Alvarado notes that this response is not being filed on behalf of all California State
 27 Court Plaintiffs but solely as to Alvarado. All California State Court Plaintiffs may (or may
 28 not) file a separate response to Pfizer's misleading Status Report.

CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2017, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: January 3, 2017.

Respectfully submitted,

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